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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,450	07/31/2003	Robert D. Harty	0006/00921	4683
27197 7590 10/16/2008 CHERSKOV & FLAYNIK THE CIVIC OPERA BUILDING 20 NORTH WACKER DRIVE, SUITE 1447 CHICAGO, IL 60606				
EXAMINER				
LEWIS, KIM M				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/633,450

**Applicant(s)**

HARTY, ROBERT D.

**Examiner**

Kim M. Lewis

**Art Unit**

3772

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 6, 8, 11, 12, 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. The amendment filed on 7/1/08 has been received and made of record. As requested, claims 4, 5, 7, 9-12, 15, 16 and 20 have been amended, claims 1, 2 and 19 have been cancelled, and claims 21-22 have been added.
2. Claims 3-18 and 20-22 are pending in the instant application.

***Allowable Subject Matter***

3. The indicated allowability of claims 6, 8, 11, 12 and 20 is withdrawn in view of the newly presented 101 and 112 rejections.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 3, 6, 8, 11, 12 and 20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As to claim 3, the recitation "whereby the third substrate contacts the patient's chest" claims the chest as a component of the invention. The human body and parts thereof are non-statutory subject matter.

As to claim 6, the recitation "whereby the third substrate contacts the patient's chest" claims the chest as a component of the invention. The human body and parts thereof are non-statutory subject matter.

As to claim 8, the recitation "whereby the third substrate contacts the patient's chest" claims the chest as a component of the invention. The human body and parts thereof are non-statutory subject matter.

As to claim 11, the recitation, "said third substrate extends at least as low as the patient's second rib" claims the patient's second rib as a component of the invention. Again, the human body and parts thereof are non-statutory subject matter.

As to claim 12, the recitation "whereby the third substrate contacts the patient's chest" claims the chest as a component of the invention. The human body and parts thereof are non-statutory subject matter.

As to claim 20, the recitation, "a first substrate which extends from an occipital region of the skull to the first thoracic vertebrae of the person" claims the occipital region of the skull to the first thoracic vertebrae of a person as a component of the invention. The human body and parts thereof are non-statutory subject matter.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 3, 6, 8, 11, 12 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As regards claims 3, 6, 8 and 12 the recitation "whereby the third substrate contacts the patient's chest" should read --whereby the third substrate is adapted to contact the patient's chest--.

As regards claim 20, the recitation "a first substrate which extends from an occipital region of the skull to the first thoracic vertebrae of the person" should read --a first substrate adapted to extend from an occipital region of the skull to the first thoracic vertebrae of the person--.

The remaining claims are necessarily objected to a being dependent upon a rejected base claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Wednesday to Friday, from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kim M. Lewis/  
Primary Examiner  
Art Unit 3772

kml  
October 14, 2008